

## § 356.25

## 46 CFR Ch. II (10–1–01 Edition)

(4) Borrower cannot insure, guaranty or become otherwise liable for debt obligations of any other entity, Person, etc.;

(5) Borrower cannot Charter or lease a vessel that is collateral for the loan;

(6) Borrower cannot incur liens, except any permitted liens that may be set forth in the loan or other financing documents;

(7) Borrower must limit its investments to marketable investments guaranteed by the United States or a State, or commercial paper with the highest rating of a generally recognized rating service;

(8) Borrower cannot make structural alterations or any other major alteration to the vessel;

(9) Borrower, if in arrears in its debt obligations to the lender, cannot make dividend payments on its capital stock; and,

(10) Borrower, if in arrears in its debt obligations to the lender, cannot make excessive contributions to pension plans, make payment of employee bonuses, or make excessive contributions to stock option plans, or provide other major fringe benefits in terms of dollar amount to its employees, officers, and directors, such as loans, etc.

(b) The mortgage may not include covenants that allow the Mortgagee to operate the vessel except as provided for in § 356.25.

### **§ 356.25 Operation of Fishing Vessels, Fish Processing Vessels, or Fish Tender Vessels by Mortgagees.**

(a) A Mortgagee that has demonstrated to MARAD that it qualifies as a Citizen of the United States and is eligible to own a vessel with a fishery endorsement may operate a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel.

(b) A Mortgagee not eligible to own a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel cannot operate or cause operation of, the vessel in the fisheries of the United States. Except as provided in paragraph (c) of this section, the vessel may not be operated for any purpose without the prior written approval of the Citizenship Approval Officer.

(c) A Mortgagee not eligible to own a Fishing Vessel, Fish Processing Vessel,

or Fish Tender Vessel may operate the vessel for a non-commercial purpose to the extent necessary for the immediate safety of the vessel or for repairs, drydocking or berthing changes; provided, that the vessel is operated under the command of a Citizen of the United States and for no longer than 15 calendar days.

(d) A Mortgagee that is holding a Preferred Mortgage on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel but that is not eligible to own a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel may take possession of the vessel in the event of default by the mortgagor other than by foreclosure pursuant to 46 U.S.C. 31329, if provided for in the mortgage or a related financing document. However, the vessel may not be operated, or caused to be operated in commerce, except as provided in paragraph (c) of this section or with the approval of the Citizenship Approval Officer.

(e) A Non-Citizen Lender that has brought a civil action in rem for enforcement of a Preferred Mortgage lien on a Citizen-owned Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel pursuant to 46 U.S.C. 31325(b)(1) may petition the court pursuant to 46 U.S.C. 31325(e)(1) for appointment of a receiver, and, if the receiver is a Person eligible to own a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel, to authorize the receiver to operate the mortgaged vessel pursuant to terms and conditions consistent with this part 356. If the receiver is not a Citizen of the United States that meets the requirements of section 2(c) of the 1916 Act, 46 App. U.S.C. 802(c), and 46 U.S.C. 12102(c), the vessel may not be operated in the fisheries of the United States.

## **Subpart E—Mortgage Trustees**

### **§ 356.27 Mortgage Trustee requirements.**

(a) A lender who does not qualify as a Citizen of the United States or is not a state or federally chartered financial institution that meets the Controlling Interest requirements of section 2(b) of the 1916 Act and Section 356.3(g) can

obtain a Preferred Mortgage on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel by using an approved Mortgage Trustee to hold the mortgage and the debt instrument that the mortgage is securing.

(b) In order to qualify as an approved Mortgage Trustee, the Mortgage Trustee must:

(1) Qualify as a Citizen of the United States eligible to own a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel;

(2) Be organized as a corporation and doing business under the laws of the United States or of a State;

(3) Be authorized under the laws of the United States or of the State under which it is organized to exercise corporate trust powers;

(4) Be subject to supervision or examination by an official of the United States Government, or of a State;

(5) Have a combined capital and surplus (as stated in its most recent published report of condition) of at least \$3,000,000; and

(6) Meet any other requirements prescribed by the Citizenship Approval Officer.

(c) The Mortgage Trustee must submit to the Citizenship Approval Officer the following documentation in order to be an approved Mortgage Trustee:

(1) An application for approval as a Mortgage Trustee as set out in paragraph (g) of this section;

(2) An Affidavit of U.S. Citizenship setting forth the required information necessary to determine that the applicant qualifies as a Citizen of the United States;

(3) A certified copy of the Articles of Incorporation and Bylaws, or other comparable documents;

(4) A copy of the most recent published report of condition of the Mortgage Trustee; and,

(5) A certification that the Mortgage Trustee is authorized under the laws of the United States or of a State to exercise corporate trust powers and is subject to supervision or examination by an official of the United States or of a State;

(d) Any right set forth in a mortgage on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel cannot be issued, assigned, or transferred to a

person who is not eligible to be a Mortgagee without the approval of the Citizenship Approval Officer.

(e) Mortgage Trustees approved by the Citizenship Approval Officer must not assume any fiduciary obligations in favor of Non-Citizen Lenders that are in conflict with the U.S. Citizen ownership and control requirements set forth in the AFA, without the approval of the Citizenship Approval Officer. An approved Mortgage Trustee may request that the Citizenship Approval Officer pre-approve a trust agreement form to ensure that the fiduciary duties assumed by the Mortgage Trustee in favor of a Non-Citizen Lender are consistent with the ownership and control requirements of this part and the AFA.

(f) We will periodically publish a list of Approved Mortgage Trustees in the FEDERAL REGISTER, but current information as to the status of any particular Mortgage Trustee must be obtained from the Citizenship Approval Officer.

(g) An application to be approved as a Mortgage Trustee should include the following:

The undersigned (the "Mortgage Trustee") hereby applies for approval as Mortgage Trustee pursuant to 46 U.S.C. 12102(c)(4) and the Regulation (46 CFR part 356), prescribed by the Maritime Administration ("MARAD"). All terms used in this application have the meaning given in the Regulation.

In support of this application, the Mortgage Trustee certifies to and agrees with MARAD as hereinafter set forth:

I. The Mortgage Trustee certifies:

(a) That it is acting or proposing to act as Mortgage Trustee on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessels documented, or to be documented under the U.S. registry;

(b) That it—

(1) Is organized as a corporation under the laws of the United States or of a State and is doing business in the United States;

(2) Is authorized under those laws to exercise corporate trust powers;

(3) Is a Citizen of the United States eligible to own a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel within the meaning of 46 U.S.C. 12102(c) and section 2(c) of the 1916 Act, as amended, (46 App. U.S.C. 802(c)) and is eligible to own a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel;

(4) Is subject to supervision or examination by an official of the United States Government or a State; and

(5) Has a combined capital and surplus of at least \$3,000,000 as set forth in its most recent published report of condition, a copy of which, dated \_\_\_\_\_, is attached.

II. The Mortgage Trustee agrees:

(a) That it will, so long as it shall continue to be on the List of Approved Mortgage Trustees referred to in the Regulation:

(1) Notify the Citizenship Approval Officer in writing, within 20 days, if it shall cease to be a corporation which:

(i) Is organized under the laws of the United States or of a State, and is doing business under the laws of the United States or of a State;

(ii) Is authorized under those laws to exercise corporate trust powers;

(iii) Is a Citizen of the United States;

(iv) Is subject to supervision or examination by an authority of the U.S. Government or of a State; and

(v) Has a combined capital and surplus (as set forth in its most recent published report of condition) of at least \$3,000,000.

(2) Notify the Citizenship Approval Officer in writing, of any changes in its name, address, officers, directors, stockholders, articles of incorporation or bylaws within 30 calendar days of such changes;

(3) Furnish to the Citizenship Approval Officer on an annual basis:

(i) An Affidavit of U.S. Citizenship demonstrating compliance with the U.S. citizenship requirements of the AFA;

(ii) A current copy of the Articles of Incorporation and Bylaws, or other comparable corporate documents;

(iii) A copy of the most recent published report of condition of the Mortgage Trustee; and,

(iv) A list of the Fishing Vessels, Fish Processing Vessels, and Fish Tender Vessels and the respective lenders for which it is acting as Mortgage Trustee.

(4) Furnish to the Citizenship Approval Officer any further relevant and material information concerning its qualifications as Mortgage Trustee under which it is acting or proposing to act as Mortgage Trustee, as the Citizenship Approval Officer may from time to time request; and,

(5) Permit representatives of the Maritime Administration, upon request, to examine its books and records relating to the matters referred to herein;

(b) That it will not issue, assign, or in any manner transfer to a person not eligible to own a documented vessel, any right under a mortgage of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel, or operate such vessel without the approval of the Citizenship Approval Officer; except that it may operate the vessel to the extent necessary for the immediate safety of the vessel,

for its direct return to the United States or for its movement within the United States for repairs, drydocking or berthing changes, but only under the command of a Citizen of the United States for a period not to exceed 15 calendar days;

(c) That after a responsible official of such Mortgage Trustee obtains knowledge of a foreclosure proceeding, including a proceeding in a foreign jurisdiction, that involves a documented Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel on which it holds a mortgage pursuant to approval under the Regulation and to which 46 App. U.S.C. 802(c) and 46 U.S.C. 12102(c) are applicable, it shall promptly notify the Citizenship Approval Officer with respect thereto, and shall ensure that the court or other tribunal has proper notice of those provisions; and

(d) That it shall not assume any fiduciary obligation in favor of Non-Citizen beneficiaries that is in conflict with any restrictions or requirements of the Regulation.

III. This application is made in order to induce the Maritime Administration to grant approval of the undersigned as Mortgage Trustee pursuant to 46 App. U.S.C. 802(c) and 46 U.S.C. 12102(c) and the Regulation, and may be relied on by the Citizenship Approval Officer for such purposes. False statements in this application may subject the applicant to fine or imprisonment, or both, as provided for violation of the proscriptions contained in 18 U.S.C. 286, 287, and 1001.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

ATTEST:

(Print or type name below)

(SEAL)

MORTGAGE TRUSTEE'S NAME & ADDRESS

By:

(print or type name below)

TITLE

#### § 356.31 Maintenance of Mortgage Trustee approval.

(a) A Mortgage Trustee that holds a Preferred Mortgage on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel must submit the following information to the Citizenship Approval Officer during each calendar year that it is acting as a Mortgage Trustee:

(1) An Affidavit of U.S. Citizenship demonstrating compliance with the U.S. citizenship requirements of the AFA;

(2) A current copy of the Articles of Incorporation and Bylaws, or other comparable corporate documents;